

Stand In The Place Where You Live."

August 2006

## Letter from the Editor

Since our last issue, and discussions with local "educators," about the possibility of joining the Blackstone Club, we have realized that many "educators," although they like the idea of the Blackstone Club, are even more excited about participating in the scientific and other educational work of the Wheeling Academy of Law & Science. Accordingly, (and because we adapt to meet the times!), we have decided to present two different ways of becoming involved in the work of WALS, while giving all members the full benefits of both WALS educational offerings and the social camaraderie of the Blackstone Club.

From now on, membership in WALS as an "educator" will automatically entitle you to membership in the Blackstone Club;

and membership in the Blackstone Club will automatically entitle you to membership in WALS. Membership fees for either will be the same, but once you join one, you will be officially included in the other without further cost.

Although we have yet to send out a "general" mailing to educators at area colleges and universities, which we intend to do by the end of the year, we already have added a number of new members into our ranks who joined WALS as "educators," including, in alphabetical order, the following: Mary Ellen Cassidy, Environmental Scientist with Wheel

*Con'd on P. 3*

## Tullamore Dew Profiles

### Timothy F. Cogan

Timothy Cogan grew up in Cleveland and lettered in tennis at St.



Ignatius High School, where he apparently fell under the grip of the Jesuits; he later graduated from Wheeling College, now Wheeling Jesuit University, in 1969, where he was Student Government president, captained the tennis team and partici-

pated in other activities best not chronicled here. He earned a master's in European History from Ohio University in 1970.

Some might say he lacked direction in his youth. In any case, his early work history is eclectic. He worked in a union democracy campaign in Billings, Montana, in 1972, and served as executive director of the Wheeling Human Rights Commission until terminated in 1976. He has been a short-order cook, investigator, psychiatric attendant and free-lance writer. He was the tennis pro at Wheeling Country Club for one memorable day.

Graduating from West Virginia University Law School in 1980, he was a member of its National Moot Court team. He served on the state Ethics Commission, taught business law at

*Con'd on P. 2*

# 2006 Blackstone Club Members

Landers P. Bonenberger	Ronald W. Kasserman
Mary Ellen Cassidy	J. Perry Manypenny
Patrick S. Cassidy	Thomas C. McCarthy, Jr.
Timothy F. Cogan	Shari McPhail
Thomas M. Cunningham	Bryan Murray
Gerald P. Duff	Thomas M. Myers
James Ellison	Frank A. O'Brien, Jr.
Kathleen J. Fantazzi	James Michael O'Brien
Sherri Farkas-Van Tassel	Irvin Shapell
Patrick V. Felton	Martin Sheehan
Kevin Flanagan	Laura E. Spadaro
Patrick M. Flatley	Frederick P. Stamp Jr.
Earl Forman, II	John P. Stimmel
Kathy Fuller	Ben Stout
William C. Gallagher	Bradley H. Thompson
Robert J. Gaudio	Theresa Toriseva
Randy Dean Gossett	Jonathan E. Turak
R. Dean Hartley	Wray V. Voegelin
Lisa Hill.	Louis A. Volpe
G. Charles Hughes	William E. Watson
Rosemary J. Humway- Warmuth	Mary J. Williams

## Cogan - *con'd from P. 1*

Wheeling Jesuit, and is a member of Cassidy, Myers, Cogan & Voegelin, where his practice deals with labor and employment, federal black lung, social security, personal injury, and criminal work.

He is admitted to practice in Ohio, West Virginia, Maryland and the District of Columbia, the latter two inactively. He served as a special assistant attorney general in federal court litigation involving WTI. He has an article in the West Virginia Law Review on the "hostility rule" in federal black lung claims.

He labored rather incompetently for Habitat for Humanity and, with more skill, continues to volunteer at Catholic Neighborhood Center with his friend, Sr. Constance Dodd. Cogan and his family and friends, including Tom Corrigan and Terry Gurley, maintain the Maurice W. and Virginia F. Cogan Scholarship at Wheeling Jesuit.

He has spent nearly a decade as an assistant volleyball coach at Central and earlier at Mount de Chantal. He still plays in the Sunday Invitational Volleyball League.

## Some might say he lacked direction in his youth.

*con'd on P. 3*

*NOTE - Every issue will contain a profile of one of our members, presented in alphabetical order, so fellow members can learn about each member's interests and accomplishments in and OUT of the profession.*

## Commentaries

is the official newsletter of the Blackstone Club, and is published by the Wheeling Academy of Law and Science. For more information, contact Barb Knutsen, Executive Director - 304.232.2576 [barbaraknutsen@firststatecapitol.com](mailto:barbaraknutsen@firststatecapitol.com)

# Letter from the Editor

*con'd from P. 1*

ing Jesuit University; James Ellison, Executive Director and Director of Education of the Laughlin Memorial Chapel; Pat Felton, Treasurer, the WALs Foundation; Kathy Fuller, founder of the Wheeling based Augusta Levy School for autistic children; Lisa Hill, medical education; Bryan Murray, sports teacher and associate of Jack FM radio; Irvin Shapell, lawyer and owner of Woodbine House Publishing Company of Bethesda, Maryland; Ben Stout, Doctor of Biology and Environmental

Scientist at Wheeling Jesuit University; and Lou Volpe, teacher with Central Catholic High School.

We welcome all new members and look forward to welcoming other educators and lawyers as the word of our new format gets out! Remember, if you know an educator or another lawyer that may like to be a member of The Blackstone Club, or get involved in the educational efforts of WALs, please bring them free to the next meeting, and/or urge them to get in touch

with Barbara for more information.



## Remember...

as a dues-paying Blackstone Club member, you may bring a different non-member lawyer to any meeting as your guest, to introduce him or her to the club.


ALSO... bring along someone you know that is an educator to the October 19, 2006 meeting - A New Beginning!

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## Cogan - *con'd from P. 2*

One of 13-15 "Ironmen" who have run all 30 of the Wheeling 20-K distance races, Tim was inducted in 2006 into the Wheeling Runners' Hall of Fame, demonstrating that, as Woody Allen said, a high proportion of life is just showing up.

He is involved in a "mixed marriage," (between people from Cleveland and Pitts-

burgh) with Janet Boyle. Their son Kevin is a skateboarder and sophomore soccer player of some note at Central with, sadly, no interest in either the Browns or the Steelers. 

# ASK BARTLEBY

Who were the lawyers associated with the United States Supreme Court case of Taylor Strauder that originated in Wheeling? ~Bill Gallagher

**T**aylor Strauder, an African-American, was convicted of murder on May 8<sup>th</sup>, 1873, in the Circuit Court of Ohio County, and was sentenced to be hanged on August 29<sup>th</sup>, 1873 “at the usual place of execution.” The conviction was challenged on the basis of the newly enacted 14<sup>th</sup> Amendment, arguing that a West Virginia law allowing only “white male persons” to be eligible to serve as jurors deprived him of due process, equal protection, and the privileges or immunities of other citizens.

The Supreme Court of Appeals of the State of West Virginia denied his appeal, and Strauder appealed by writ of error to the United States Supreme Court.

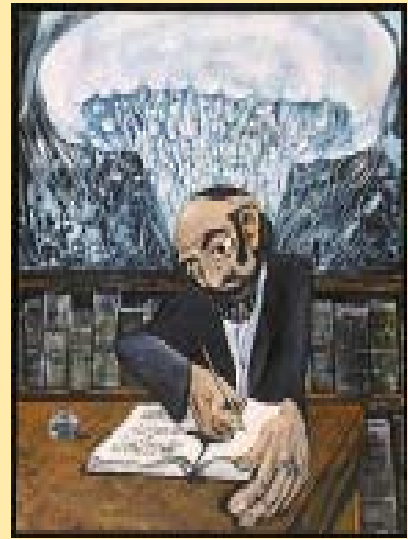
The Supreme Court framed the issue as “whether, in the composition or selection of jurors by whom he is to indicted or tried, all persons of his race or color

may be excluded by law, solely because of their race or color, so that by no possibility can any colored man sit upon the jury.” Citing the *Slaughter-House Cases* (16 Wall. 36), The Supreme Court held that the very reason the 14<sup>th</sup> Amendment was adopted was to “assure the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons.” “It not only gave citizenship and the privileges of citizenship to persons of color but it denied to any State the power to withhold from them the equal protection of the law.” *Strauder v. West Virginia*, 100 U.S. 303 (1879).

Strauder was represented in the Ohio County Circuit Court by Wheeling lawyer Blackburn Barrett Dovenor, a former union officer who went on to serve West Virginia’s First Congressional District in Congress. According

to the book, “Men of West Virginia,” (Biographical Publishing Company, 1903), Mr. Dovenor was an avowed Republican, a member of the firm of Davenport and Dovenor, and like our own Senator Robert C. Byrd, became instrumental in the appropriation of substantial sums of money for his home state—in his case for improvement of navigation on the Ohio river between Pittsburgh and Marietta. The same book mentions nothing of his representation of Taylor Strauder, but explains that as an advocate “he was earnest, making his client’s cause his own.”

In the United States Supreme Court, Dovenor’s senior partner, George O. Davenport, appears as counsel, along with Charles Devens, Attorney General of the



**Imprimis: I am a man who, from his youth upwards, has been filled with a profound conviction that the easiest way of life is the best. — *Bartleby, the Scrivener* Herman Melville**

United States under Rutherford B. Hayes from 1877 to 1881. Mr. Devens was a distinguished union officer during the war, and as a Brigadier General, his troops were the first to occupy Richmond after its fall. He was, before becoming Attorney General, the Fifth Commander in Chief of the Grand Army of the Republic.


Presiding over the Strauder trial in Ohio

*Con'd on P. 5*

County was Circuit Judge Thayer Melvin, who the same book notes was born “in that portion of Brooke County, Virginia which in 1847 became Hancock County,” with “North of Ireland stock.” He was admitted to practice in 1853, at the age of 18. He too fought in the civil war on the union side, and as the book further states, “Politically, Judge Melvin was, at the beginning, a follower of Henry Clay but since the war he has acted with the Republican part, at least on national questions. He is not, [however] recognized as a partisan.”

The *Strauder* case has been cited as precedent in a number of other cases over the years, including the 1975 case of *Taylor v. Louisiana*, where the Supreme Court relied on

*Strauder* to strike down a law which excluded women from juries. Although the case was hailed as a significant win for equal protection at the time, the striking down of West Virginia’s law excluding African-Americans from sitting on juries did not guarantee them a right to do so, as subsequent ill-willed county officials could simply by refusing to call them out for jury duty.

For more information, see Stephen Cresswell, “the Case of Taylor Strauder,” *West Virginia History* 44 (Spring, 1983) 193-211. 

**In the next issue, Bartleby explains the Wheeling origin of “Yellow Dog Contracts”-and identifies the legal professionals involved.**

## THE WALS FOUNDATION: Educational Outreach


*As we like to say, “If those who believe in the Civil Justice System don’t educate the public, those who don’t will.”*

You can now view a video of our mock trial project by clicking on our website: [www.firststatecapitol.com](http://www.firststatecapitol.com).

This is a sample, in still pictures, of what our program is all about.

We’re gearing up for the 2006/2007 school year when we will continue our mock trials in Ohio County public schools (4th and 8th grade classes) while making plans to expand into parochial and private schools and also into other counties.

NEW scripts are being created by Patrick S. Cassidy, President of The WALS Foundation. We will continue our scripts for 4th graders in the

format of a fairytale trial while 8th grade scripts will be more sophisticated. Both scripts will once again be on the topic of crystal meth, as requested by our grantor, Department of Health & Human Resources. 



*Thanks again, to all lawyers who participate in this growing educational program!*

# The State of Justice

## Trial by Jury: “Under Attack”

*Today, Americans’ fundamental right to trial by jury is under attack. Corporate special interests are trying to limit our access to our court system.*

*This is being done two ways—they are either forcing individuals to sign restrictive contracts or arbitration agreements to give up their right to a trial by jury when a dispute arises that would otherwise subject a corporate wrongdoer to the civil justice system, or, by advocating artificial “limits” that bind the hands of our juries through so-called “tort reforms” that significantly limit what juries are allowed to do.*

*It is good to reflect on the heritage of this right, which has been compiled by Beth A. White, Executive Director of the West Virginia Trial Lawyers Association, and which “Fact Sheet,” is re-printed here with her permission, and WVTLA. The title of the “Fact-Sheet,” and*

*introductory paragraph contain minor modifications to fit the format of The Blackstone Club Commentaries.*

### A Tradition of Nearly 800 Years

Trial by jury was first guaranteed in 1215 in the Magna Carta—the “great charter” of liberties between King John and the people of England, which protected their civil rights as citizens. It states, “No free man shall be taken, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land” (Chapter 39).

■ “The trial by jury ever has been, and I trust ever will be, looked upon as the glory of English law,” Sir William Blackstone, *Commentaries on the*

*Laws of England*—a jurist and professor whose interpretation of English common law was so important to our U. S. Constitution and Bill of Rights that his sculpture is on the wall of the House Chamber in the U.S. Capitol.

### Promoted As a Cause of Liberty

In the mid-1700s, the British began to use the courts to repress calls for independence by people in the Ameri-

can colonies. One of the first privileges the colonists lost was right to trial by jury in many places—although it had been guaranteed to British subjects since the Magna Carta. As a result, the right to trial by jury is mentioned in many of the great documents of the Revolutionary Era—including the Declaration of Independence.

■ “Trial by jury [is] the inherent and invaluable right of every British subject in these colonies,” Resolu-

tion of the Stamp Act Congress, October 19, 1765

■ Colonists are entitled to “the great and estimable privilege of being tried by their

**I consider (trial by jury) as the only anchor yet imagined by man, by which a government can be held to the principles of its constitution.”**

**President Thomas Jefferson**

*Con’d on P.7*

## Con'd from P. 6

peers in the vicinage,” Declarations and Resolves, First Continental Congress, 1774.

■ The denial of “the accustomed and inestimable privilege of trial by jury, in cases of both life and property,” was listed as grounds for the Revolutionary War in the Declaration of Causes and Necessity of Taking Up Arms, 1775.

■ Great Britain “depriving us, in many cases, the benefits of trial by jury” was listed among the charges against King George III in the Declaration of Independence (1776)—a right for which our founding fathers pledged “[their] lives, [their] fortunes] and [their] Sacred Honor.”

## Protected in Our Earliest State Constitutions

“The ancient trial by jury is preferable to any other and ought to be held sacred,” George Mason, 1776 Constitution of Virginia, on which the U.S. Constitution is based.

■ “[I]n all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable,” Constitution of North Carolina (1776).

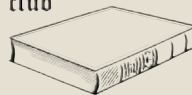
■ Similar language appears in the constitutions for Pennsylvania (1776), Vermont (1777), Massachusetts (1780) and New Hampshire (1784).

## Preserved in Our Bill of Rights

The U. S. Constitution, drafted in 1787, included a provision which guaranteed the right to a jury trial in criminal cases, but excluded that same right for civil cases because the law varied too much from one state to another. This failure nearly defeated the Constitution and its ratification by the states.

■ “Trial by jury is the best appendage of freedom. Guard with jealous attention the public liberty. Suspect everyone who approaches that jewel. I hope we shall never be induced by

the  
**Blackstone**  
club



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such arguments, to part with that excellent mode of trial,” Patrick Henry, 1788, Virginia Constitutional Convention.


■ “I consider [trial by jury] as the only anchor yet imagined by man, by which a government can be held to the principles of its constitution,” Thomas Jefferson.

In 1791, the United States Congress issued the Bill of Rights, the first ten amendments to the Constitution, which secured the rights and privileges of Americans—including the right to a trial by jury in civil court.

“In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United

States, according to the rules of the common law.”

## 7<sup>th</sup> Amendment

Today, the United States is one of only two countries in the world that guarantees their citizens the right to a civil jury trial. 

# Upcoming Blackstone Club Meetings & CLE's

## Tonight: "The Dog Days of Summer"

Presentation by *Gerald Duff*

**Winston S. Churchill, The Man and the Quotes**  
(Both the Profundity and the Humor)

the  
**Blackstone**  
club



## Oct. 19: *Tom Myers & Friends*

Tom encourages you to bring a friend so we can have a full house for the SPECIAL ENTERTAINMENT he has contracted to bring in. If you like laughing and listening to great music, don't miss this unbelievable evening of entertainment.

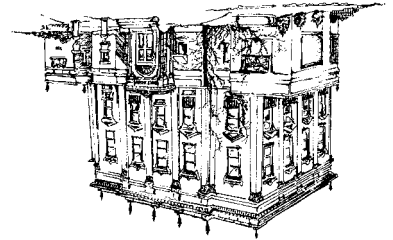
## Dec. 14: *Black Tie Party*

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## Upcoming CLE's

### Sept. 20: *-Legislative Update*

**presented by Senator Jeffrey V. Kessler and Delegate Jack Yost**  
(60 min. CLE noon series - FREE to Blackstone Club Members)



First State Capitol  
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Wheeling, WV 26003-3582



the  
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